IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 723 OF 2007

Shri Ravindra Jankiram Kukkar ..Petitioner

Vs.

Sou. Seema Rajendra Kukkar & Anr. ..Respondents

Mr. Rameshwar N. Gite for petitioner.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 25, 2007.

P.C.:

1. Heard Mr. Gite the learned counsel for the petitioner-husband. The respondent no.1-wife had approached the learned JMFC at Dhule in Criminal Misc. Application No. 507 of 2001 filed under Section 125 of Cr.P.C. for maintenance for herself and for her minor daughter. Admittedly, the petitioner and respondent no.1 were married on 6/3/1999 and the respondent no.2 was born out of the said wedlock. The learned JMFC, Dhule allowed the Criminal Misc.

Application No. 507 of 2001 by his order dated 17/5/2003 and directed maintenance amount at the rate of Rs.1500/- per month and Rs.1000/- per month to be paid to the respondent nos.1 and 2 respectively. After filing the said application under Section 125 of Cr.P.C., the wife had filed Civil Suit No. 90 of 2002 and she had made an application for interim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. This application came to be decided by the learned Civil Judge, Senior Division at Dhule on 28/9/2004 by directing the present petitioner to pay an amount of Rs.3000/- per month to the wife and Rs.2000/- per month to the minor daughter along with arrears of past maintenance.

2. The petitioner-husband, who was working as Civil Engineer, and resident of Burudgalli, Yeola, Dist. Nashik filed Criminal Misc. Application No. 72 of 2005 before the learned JMFC at Yeola, Dist. Nashik purportedly under Section 127 (2) of Cr.P.C. and prayed for cancellation of maintenance granted to the wife and the daughter by the learned JMFC at Dhule in Criminal Misc. Application No. 507 of 2001. This

application came to be allowed as per the judgment and order dated 4/10/2005 passed by the learned JMFC at Yeola and being aggrieved by the same, the present respondents filed Criminal Revision Application No. 130 of 2005 before the learned Additional Sessions Judge at Niphad. The said Revision Application came to be allowed as per the judgment and order dated 9/3/2007 and hence this petition under Article 227 of the Constitution.

3. The learned Additional Sessions Judge has relied upon the latest decision of the Division Bench of this Court in the case of Vinayak Ganpat Salve vs. Sau. Ujwala V. Salve and ors. **[2006 ALL MR (Cri) 481]**, whereas the learned counsel for the petitioner-husband placed reliance on the earlier decisions of the Single Benches in the case of Vithalrao Damodhar Salve vs. Savitrabai Vithalrao Salve and ors. **[1987 Mh.L.J. 226]** and Anandrao s/o Marotrao Kharabe vs. Madhuri Anandrao Kharabe **[2003 (1) Mh.L.J.388]**.

4. It is evident that the judgment in the case of

Vinayak Salve (Supra) is the outcome of a reference made by a Single Bench to resolve the controversy in the views taken by different Single Benches on the issue of jurisdiction to entertain an application under Section 127 of Cr.P.C. by different Magistrates. The Division Bench in Vinayak Salve's case (Supra), after referring to all earlier judgments of the Single Benches and also a judgment of the Gujarat High Court in the case of Kailashben Joshi vs. Arvindbhai Joshi **[III-1986 (1) Crimes 556]** concluded its opinion in the following words:-

> "In our opinion reference to 'the Magistrate' under Section 127 would only mean the Court of the Magistrate which had granted the earlier application. To expect the same Magistrate to decide the application for alteration would tend to negative the right of a party to apply for alteration as the same Magistrate is not likely to continue in the same Court indefinitely or for a long time to come for various reasons, e.g. his likely transfer to another Court which takes place normally after

> three years, his retirement or otherwise ceasing to be a Magistrate for any other reason which would defeat the right of a party to apply for alteration in maintenance allowance. To follow the said Magistrate in different courts or districts would not be feasible and may even tend to defeat the right of a party to apply for alteration."

5. The Division Bench has thus resolved the controversy and has clearly laid down that the word "the Magistrate" under Section 127 would only mean the Court or the Magistrate who had granted the earlier application and presided over by any Magistrate. It is also possible in a given case that the wife is forced to displace herself from the place where her husband was staying to the place of her near relations like brother or parents etc. and if she files a fresh application for enhancement of maintenance under Section 127 before the court of a Magistrate at another Taluka or District place, the view could be different, but so far as the husband’s application under Section 127 (2) is concerned, the view taken by

the Division Bench in Vinayak Salve's case has been rightly followed by the learned Additional Sessions Judge and, therefore, I do not find any reason to interfere with the same.

6. Hence, the petition is rejected. However, this order will not come in the way of the petitioner to file a fresh application under Section 127(2) of Cr.P.C. before the same court of the Magistrate, if permissible in law.

(B.H. Marlapalle,J.)